

109TH CONGRESS  
1ST SESSION

# S. 1615

To establish the Federal Emergency Management Agency as an independent agency, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 2005

Mrs. CLINTON (for herself, Ms. MIKULSKI, Mr. LAUTENBERG, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To establish the Federal Emergency Management Agency as an independent agency, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Federal Emergency  
5       Management Agency Restoration Act of 2005”.

1 **TITLE I—FEDERAL EMERGENCY**  
2 **MANAGEMENT AGENCY**

3 **SEC. 101. ESTABLISHMENT OF AGENCY AND DIRECTOR AND**  
4 **DEPUTY DIRECTOR.**

5 (a) ESTABLISHMENT.—The Federal Emergency  
6 Management Agency is established as an independent es-  
7 tablishment in the executive branch as defined under sec-  
8 tion 104 of title 5, United States Code.

9 (b) DIRECTOR.—

10 (1) IN GENERAL.—The Director of the Federal  
11 Emergency Management Agency shall be the head of  
12 the Federal Emergency Management Agency. The  
13 Director shall be appointed by the President, by and  
14 with the advice and consent of the Senate. The Di-  
15 rector shall report directly to the President.

16 (2) QUALIFICATIONS.—The Director of the  
17 Federal Emergency Management Agency shall have  
18 significant experience, knowledge, training, and ex-  
19 pertise in the area of emergency preparedness, re-  
20 sponse, recovery, and mitigation as related to nat-  
21 ural disasters and other national cataclysmic events.

22 (3) EXECUTIVE SCHEDULE POSITION.—Section  
23 5312 of title 5, United States Code, is amended by  
24 adding at the end the following:

1 “Director of the Federal Emergency Manage-  
2 ment Agency.”.

3 (c) DEPUTY DIRECTOR.—

4 (1) IN GENERAL.—The Deputy Director of the  
5 Federal Emergency Management Agency shall assist  
6 the Director of the Federal Emergency Management  
7 Agency. The Deputy Director shall be appointed by  
8 the President, by and with the advice and consent  
9 of the Senate.

10 (2) QUALIFICATIONS.—The Deputy Director of  
11 the Federal Emergency Management Agency shall  
12 have significant experience, knowledge, training, and  
13 expertise in the area of emergency preparedness, re-  
14 sponse, recovery, and mitigation as related to nat-  
15 ural disasters and other national cataclysmic events.

16 (3) EXECUTIVE SCHEDULE POSITION.—Section  
17 5313 of title 5, United States Code, is amended by  
18 adding at the end the following:

19 “Deputy Director of the Federal Emergency  
20 Management Agency.”.

21 **SEC. 102. FUNCTIONS.**

22 (a) IN GENERAL.—The functions of the Federal  
23 Emergency Management Agency include the following:

1           (1) All functions and authorities prescribed by  
2           the Robert T. Stafford Disaster Relief and Emer-  
3           gency Assistance Act (42 U.S.C. 5121 et seq.).

4           (2) Carrying out its mission to reduce the loss  
5           of life and property and protect the Nation from all  
6           hazards by leading and supporting the Nation in a  
7           comprehensive, risk-based emergency management  
8           program—

9                   (A) of mitigation, by taking sustained ac-  
10                  tions to reduce or eliminate long-term risk to  
11                  people and property from hazards and their ef-  
12                  fects;

13                  (B) of planning for building the emergency  
14                  management profession to prepare effectively  
15                  for, mitigate against, respond to, and recover  
16                  from any hazard;

17                  (C) of response, by conducting emergency  
18                  operations to save lives and property through  
19                  positioning emergency equipment and supplies,  
20                  through evacuating potential victims, through  
21                  providing food, water, shelter, and medical care  
22                  to those in need, and through restoring critical  
23                  public services;

24                  (D) of recovery, by rebuilding communities  
25                  so individuals, businesses, and governments can

1 function on their own, return to normal life,  
2 and protect against future hazards; and

3 (E) of increased efficiencies, by coordi-  
4 nating efforts relating to mitigation, planning,  
5 response, and recovery.

6 (b) FEDERAL RESPONSE PLAN.—

7 (1) ROLE OF FEMA.—Notwithstanding any pro-  
8 vision of the Homeland Security Act of 2002 (6  
9 U.S.C. 101 et seq.), the Federal Emergency Man-  
10 agement Agency shall remain the lead agency for the  
11 Federal Response Plan established under Executive  
12 Order No. 12148 (44 Fed. Reg. 43239) and Execu-  
13 tive Order No. 12656 (53 Fed. Reg. 47491).

14 (2) REVISION OF RESPONSE PLAN.—Not later  
15 than 60 days after the date of enactment of this  
16 Act, the Director of the Federal Emergency Man-  
17 agement Agency shall revise the Federal Response  
18 Plan to reflect the establishment of the Federal  
19 Emergency Management Agency as an independent  
20 establishment under this Act.

21 (c) TECHNICAL AND CONFORMING AMENDMENT.—

22 (1) REPEAL.—Section 507 of the Homeland Se-  
23 curity Act of 2002 (6 U.S.C. 317) is repealed.

24 (2) TABLE OF CONTENTS.—The table of con-  
25 tents for the Homeland Security Act of 2002 (6

1 U.S.C. 101) is amended by striking the item relating  
 2 to section 507.

3 **SEC. 103. RULE OF CONSTRUCTION.**

4 Nothing in this Act shall be construed to detract from  
 5 the Department of Homeland Security’s primary mission  
 6 to secure the homeland from terrorist attacks.

7 **TITLE II—TRANSFER AND**  
 8 **SAVINGS PROVISIONS**

9 **SEC. 201. DEFINITIONS.**

10 In this title, unless otherwise provided or indicated  
 11 by the context—

12 (1) the term “Federal agency” has the meaning  
 13 given to the term “agency” by section 551(1) of title  
 14 5, United States Code;

15 (2) the term “function” means any duty, obli-  
 16 gation, power, authority, responsibility, right, privi-  
 17 lege, activity, or program; and

18 (3) the term “office” includes any office, ad-  
 19 ministration, agency, institute, unit, organizational  
 20 entity, or component thereof.

21 **SEC. 202. TRANSFER OF FUNCTIONS.**

22 There are transferred to the Federal Emergency  
 23 Management Agency established under section 101 of this  
 24 Act all functions which the Director of the Federal Emer-  
 25 gency Management Agency of the Department of Home-

1 land Security exercised before the date of the enactment  
2 of this title.

3 **SEC. 203. PERSONNEL PROVISIONS.**

4 (a) APPOINTMENTS.—The Director of the Federal  
5 Emergency Management Agency may appoint and fix the  
6 compensation of such officers and employees, including in-  
7 vestigators, attorneys, and administrative law judges, as  
8 may be necessary to carry out the respective functions  
9 transferred under this title. Except as otherwise provided  
10 by law, such officers and employees shall be appointed in  
11 accordance with the civil service laws and their compensa-  
12 tion fixed in accordance with title 5, United States Code.

13 (b) EXPERTS AND CONSULTANTS.—The Director of  
14 the Federal Emergency Management Agency may obtain  
15 the services of experts and consultants in accordance with  
16 section 3109 of title 5, United States Code, and com-  
17 pensate such experts and consultants for each day (includ-  
18 ing traveltime) at rates not in excess of the rate of pay  
19 for level IV of the Executive Schedule under section 5315  
20 of such title. The Director of the Federal Emergency Man-  
21 agement Agency may pay experts and consultants who are  
22 serving away from their homes or regular place of busi-  
23 ness, travel expenses and per diem in lieu of subsistence  
24 at rates authorized by sections 5702 and 5703 of such

1 title for persons in Government service employed intermit-  
2 tently.

3 **SEC. 204. DELEGATION AND ASSIGNMENT.**

4 Except where otherwise expressly prohibited by law  
5 or otherwise provided by this title, the Director of the Fed-  
6 eral Emergency Management Agency may delegate any of  
7 the functions transferred to the Director of the Federal  
8 Emergency Management Agency by this title and any  
9 function transferred or granted to such Director after the  
10 effective date of this title to such officers and employees  
11 of the Federal Emergency Management Agency as the Di-  
12 rector may designate, and may authorize successive redele-  
13 gations of such functions as may be necessary or appro-  
14 priate. No delegation of functions by the Director of the  
15 Federal Emergency Management Agency under this sec-  
16 tion or under any other provision of this title shall relieve  
17 such Director of responsibility for the administration of  
18 such functions.

19 **SEC. 205. REORGANIZATION.**

20 The Director of the Federal Emergency Management  
21 Agency is authorized to allocate or reallocate any function  
22 transferred under section 202 among the officers of the  
23 Federal Emergency Management Agency, and to estab-  
24 lish, consolidate, alter, or discontinue such organizational



1 entities in the Federal Emergency Management Agency as  
2 may be necessary or appropriate.

3 **SEC. 206. RULES.**

4       The Director of the Federal Emergency Management  
5 Agency is authorized to prescribe, in accordance with the  
6 provisions of chapters 5 and 6 of title 5, United States  
7 Code, such rules and regulations as the Director deter-  
8 mines necessary or appropriate to administer and manage  
9 the functions of the Federal Emergency Management  
10 Agency.

11 **SEC. 207. TRANSFER AND ALLOCATIONS OF APPROPRIA-**  
12 **TIONS AND PERSONNEL.**

13       Except as otherwise provided in this title, the per-  
14 sonnel employed in connection with, and the assets, liabil-  
15 ities, contracts, property, records, and unexpended bal-  
16 ances of appropriations, authorizations, allocations, and  
17 other funds employed, used, held, arising from, available  
18 to, or to be made available in connection with the func-  
19 tions transferred by this title, subject to section 1531 of  
20 title 31, United States Code, shall be transferred to the  
21 Federal Emergency Management Agency. Unexpended  
22 funds transferred pursuant to this section shall be used  
23 only for the purposes for which the funds were originally  
24 authorized and appropriated.

1 **SEC. 208. INCIDENTAL TRANSFERS.**

2       The Director of the Office of Management and Budg-  
3 et, at such time or times as the Director shall provide,  
4 is authorized to make such determinations as may be nec-  
5 essary with regard to the functions transferred by this  
6 title, and to make such additional incidental dispositions  
7 of personnel, assets, liabilities, grants, contracts, property,  
8 records, and unexpended balances of appropriations, au-  
9 thorizations, allocations, and other funds held, used, aris-  
10 ing from, available to, or to be made available in connec-  
11 tion with such functions, as may be necessary to carry out  
12 the provisions of this title. The Director of the Office of  
13 Management and Budget shall provide for the termination  
14 of the affairs of all entities terminated by this title and  
15 for such further measures and dispositions as may be nec-  
16 essary to effectuate the purposes of this title.

17 **SEC. 209. EFFECT ON PERSONNEL.**

18       (a) IN GENERAL.—Except as otherwise provided by  
19 this title, the transfer pursuant to this title of full-time  
20 personnel (except special Government employees) and  
21 part-time personnel holding permanent positions shall not  
22 cause any such employee to be separated or reduced in  
23 grade or compensation for one year after the date of trans-  
24 fer of such employee under this title.

25       (b) EXECUTIVE SCHEDULE POSITIONS.—Except as  
26 otherwise provided in this title, any person who, on the

1 day preceding the effective date of this title, held a posi-  
2 tion compensated in accordance with the Executive Sched-  
3 ule prescribed in chapter 53 of title 5, United States Code,  
4 and who, without a break in service, is appointed in the  
5 Federal Emergency Management Agency to a position  
6 having duties comparable to the duties performed imme-  
7 diately preceding such appointment shall continue to be  
8 compensated in such new position at not less than the rate  
9 provided for such previous position, for the duration of  
10 the service of such person in such new position.

11 **SEC. 210. SAVINGS PROVISIONS.**

12 (a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—

13 All orders, determinations, rules, regulations, permits,  
14 agreements, grants, contracts, certificates, licenses, reg-  
15 istrations, privileges, and other administrative actions—

16 (1) which have been issued, made, granted, or  
17 allowed to become effective by the President, any  
18 Federal agency or official thereof, or by a court of  
19 competent jurisdiction, in the performance of func-  
20 tions which are transferred under this title, and

21 (2) which are in effect at the time this title  
22 takes effect, or were final before the effective date  
23 of this title and are to become effective on or after  
24 the effective date of this title,

1 shall continue in effect according to their terms until  
2 modified, terminated, superseded, set aside, or revoked in  
3 accordance with law by the President, the Director of the  
4 Federal Emergency Management Agency or other author-  
5 ized official, a court of competent jurisdiction, or by oper-  
6 ation of law.

7 (b) PROCEEDINGS NOT AFFECTED.—The provisions  
8 of this title shall not affect any proceedings, including no-  
9 tices of proposed rulemaking, or any application for any  
10 license, permit, certificate, or financial assistance pending  
11 before the Federal Emergency Management Agency at the  
12 time this title takes effect, with respect to functions trans-  
13 ferred by this title but such proceedings and applications  
14 shall continue. Orders shall be issued in such proceedings,  
15 appeals shall be taken therefrom, and payments shall be  
16 made pursuant to such orders, as if this title had not been  
17 enacted, and orders issued in any such proceedings shall  
18 continue in effect until modified, terminated, superseded,  
19 or revoked by a duly authorized official, by a court of com-  
20 petent jurisdiction, or by operation of law. Nothing in this  
21 subsection shall be deemed to prohibit the discontinuance  
22 or modification of any such proceeding under the same  
23 terms and conditions and to the same extent that such  
24 proceeding could have been discontinued or modified if  
25 this title had not been enacted.

1       (c) SUITS NOT AFFECTED.—The provisions of this  
2 title shall not affect suits commenced before the effective  
3 date of this title, and in all such suits, proceedings shall  
4 be had, appeals taken, and judgments rendered in the  
5 same manner and with the same effect as if this title had  
6 not been enacted.

7       (d) NONABATEMENT OF ACTIONS.—No suit, action,  
8 or other proceeding commenced by or against the Federal  
9 Emergency Management Agency, or by or against any in-  
10 dividual in the official capacity of such individual as an  
11 officer of the Federal Emergency Management Agency,  
12 shall abate by reason of the enactment of this title.

13       (e) ADMINISTRATIVE ACTIONS RELATING TO PRO-  
14 MULGATION OF REGULATIONS.—Any administrative ac-  
15 tion relating to the preparation or promulgation of a regu-  
16 lation by the Federal Emergency Management Agency re-  
17 lating to a function transferred under this title may be  
18 continued by the Federal Emergency Management Agency  
19 with the same effect as if this title had not been enacted.

20 **SEC. 211. SEPARABILITY.**

21       If a provision of this title or its application to any  
22 person or circumstance is held invalid, neither the remain-  
23 der of this title nor the application of the provision to  
24 other persons or circumstances shall be affected.

1 **SEC. 212. TRANSITION.**

2 The Director of the Federal Emergency Management  
3 Agency is authorized to utilize—

4 (1) the services of such officers, employees, and  
5 other personnel of the Federal Emergency Manage-  
6 ment Agency with respect to functions transferred  
7 by this title; and

8 (2) funds appropriated to such functions for  
9 such period of time as may reasonably be needed to  
10 facilitate the orderly implementation of this title.

11 **SEC. 213. REFERENCES.**

12 Any reference in any other Federal law, Executive  
13 order, rule, regulation, or delegation of authority, or any  
14 document of or pertaining to a department, agency, or of-  
15 fice from which a function is transferred by this title—

16 (1) to the head of such department, agency, or  
17 office is deemed to refer to the head of the depart-  
18 ment, agency, or office to which such function is  
19 transferred; or

20 (2) to such department, agency, or office is  
21 deemed to refer to the department, agency, or office  
22 to which such function is transferred.

23 **SEC. 214. ADDITIONAL CONFORMING AMENDMENTS.**

24 (a) RECOMMENDED LEGISLATION.—After consulta-  
25 tion with the appropriate committees of the Congress and  
26 the Director of the Office of Management and Budget, the

1 Director of the Federal Emergency Management Agency  
2 shall prepare and submit to Congress recommended legis-  
3 lation containing technical and conforming amendments to  
4 reflect the changes made by this Act.

5 (b) SUBMISSION TO CONGRESS.—Not later than 6  
6 months after the effective date of this title, the Director  
7 of the Federal Emergency Management Agency shall sub-  
8 mit the recommended legislation referred to under sub-  
9 section (a).

○